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TRANSLATION

OF

THE LAW OF EMINENT DOMAIN,

EXTENDED TO CUBA AND PORTO RICO BY ROYAL DECREE OF JUNE 13, 1884,

AND

REGULATIONS FOR ITS APPLICATION.

WAR DEPARTMENT,
DIVISION OF INSULAR AFFAIRS.
MARCH, 1901.

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TRANSLATION

OF THE

LAW OF EMINENT DOMAIN, EXTENDED TO CUBA AND PORTO RICO BY ROYAL DECREE OF JUNE 13, 1884, AND REGULATIONS FOR ITS APPLICATION.

LAW OF JANUARY 10, 1879.

TITLE I.—GENERAL PROVISIONS.

ARTICLE 1. Forcible expropriation for a cause of public utility, authorized by article 10 of the Constitution, can not take place, with regard to real property, except in accordance with the provisions of this law.

ART. 2. Works of public utility shall be those whose direct object is to furnish to the State, to one or more provinces, or to one or more towns, any uses or improvements which may redound to the general good, whether executed on account of the State, of the provinces, or of the towns, or by companies or private enterprises duly authorized.

ART. 3. The expropriation referred to in article 1 can not take place without the following requisites being first complied with:

First. A declaration of public utility.

Second. A declaration to the effect that all or a part of the real property which it is desired to expropriate is indispensably necessary for the execution thereof.

Third. An appraisal of what is to be sold or assigned.

Fourth. Payment of the price which represents the indemnity for what is forcibly alienated or ceded.

ART. 4. Any person deprived of his property without the requisites mentioned in the foregoing article having been complied with, may institute summary proceedings to retain or recover possession in order that the judges may protect and, in a proper case, restore possession to the person improperly dispossessed.

ART. 5. The expropriation proceedings shall be conducted with the persons who, in accordance with the registry of property or the tax list, appear as the owners or as having their possession recorded.

If, on account of their age or for any other reason, the owner of a piece of property should be incapacitated to enter into a contract, and should

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have no curator or other person to represent him, or the property should be the object of litigation, the proceedings shall be conducted with the *promotor fiscal*, who may validly perform in his name all that is stated in the foregoing article.

When the owner of an estate is unknown, or if known, his whereabouts are unknown, the order or decree relating to the expropriation of the estate shall be published in the *Boletin Oficial* of the province and in the *Gaceta de Madrid*. Should no statement be forthcoming within a period of fifty days, either from the owner in person or through some one duly empowered, it shall be presumed that consent is given for the representative of the department of public prosecution to represent said owner in the expropriation proceedings.

ART. 6. All those who can not alienate the property which they administer without the permission of a judicial authority, are authorized to do so in the cases mentioned in this law, without prejudice to securing, in accordance to law, the amounts which they may receive in consequence of the alienation in favor of the minors or wards. In no case shall said amounts be delivered to them, but they shall always be deposited and held at the disposal of the proper judicial authority.

ART. 7. Transfers of ownership, under whatsoever title, shall not interfere with the expropriation proceedings, the new owner being considered as subrogated to the obligations and rights of the former owner.

ART. 8. The rents and contributions pertaining to the property expropriated for works of public utility shall be admitted during the year following the date of the alienation as an evidence of the legal capacity of the person dispossessed to exercise the rights which may pertain to him.

ART. 9. The concessionaires and contractors of public works who may be properly authorized to obtain the alienation, temporary occupation, or use of materials, in the manner authorized by this law, shall be subrogated to all the obligations and rights of the administration for the purposes of this law.

TITLE II.—EXPROPRIATION.

SECTION I.—FIRST PERIOD.—DECLARATION OF PUBLIC UTILITY.

ART. 10. The declaration that a work is of public utility shall be the subject of a law, when, in whole or in part it must be paid for with the funds of the State, or when without the attendance of these circumstances its importance so requires in the judgment of the Government.

It is the duty of the Government, through the respective Minister, to make said declaration when the work concerns several provinces, or when it must be paid for or aided with general funds, for the distribution of which it has been previously authorized by law.

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In other cases this duty pertains to the governor of the province, after hearing the deputation, and also the ayuntamiento, when municipal works are in question.

ART. 11. Works in charge of the State executed according to the prescriptions of Chapter III of the law of public works, those included in the general, provincial, and municipal plans designated in articles 20, 24, and 14 of the said law of public works; every work, whatever be its character, whose execution may have been authorized by a law or may have been designated in the special laws for railways, roads, waters and ports which have been enacted, or may be enacted hereafter, are excepted from the formality of a declaration of public utility. All works of urban police, and especially the enlargement and internal improvement of towns, are also exempt from this requirement.

ART. 12. Proceedings for a declaration of public utility may be instituted at the instance of the authorities who are to make said declaration with the consent of one or more corporations, or at the instance of a private individual or a properly organized company.

ART. 13. In any case there shall be presented in duplicate, to the proper authority, according to article 10, the complete plan of the work it is proposed to construct, with sufficient explanations, not only to form a clear idea of the same, but also of the advantages its construction would bring to general and common interests, and a statement of the funds available to carry out the work.

The authority whose duty it is to make a declaration of public utility shall, by means of the official periodicals of the districts interested in the work, and by means of communications directed to the authorities of the same, advise both them and the public of the request made, so that at the proper time they may present such objections as they may deem proper within a period which shall be not less than eight days, if a work which affects only an ayuntamiento is in question; twenty days, if it affects a province, and thirty days, should it extend to a number of provinces, in which case the announcements shall be also inserted in the *Gaceta* of Madrid.

SECTION II.—SECOND PERIOD.—NECESSITY OF THE OCCUPATION OF THE REAL PROPERTY.

ART. 14. After a work has been declared of public utility, it is the duty of the administration to decide whether all or a part of the real property is necessary for the execution of said work.

ART. 15. The person or corporation authorized to construct a work shall present to the government of the province a list of the persons interested in the expropriation, according to the plan approved by the same, and an authorized revision of it by those charged with the inspection of works, either by the public administration or by the corporations which are to finance the same, stating therein the correla-

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tive situation, the number and kinds of property of each owner that must be occupied in whole or in part, as well as the names of the lessees or tenants, making the proper division by municipal districts.

ART. 16. The governor of the province, within three days after having received the reports referred to in the foregoing article, shall transmit to each mayor a nominal statement of the part relating to his district, in order that, when duly compared with the tax list, and with the data in the registry of property, should it be necessary, and the errors, if any, corrected, he prepare in accordance therewith, and transmit within a period not to exceed fifteen days, the report required for the purposes mentioned in article 5 of this law.

ART. 17. When the nominal statement of the property owners, authenticated by the mayors has been received, the governor shall order its insertion in the *Boletin Oficial* of the province, fixing a period, which shall not be less than fifteen nor more than thirty days, in order that the persons or corporations interested may object to the necessity of the occupation proposed, and in any manner oppose the utility of the work which is finally determined by the declaration of public utility.

ART. 18. After the claims have been filed within the period mentioned in the foregoing article, the civil governor, after hearing the provincial commission, shall decide within the following fifteen days as to the necessity of the occupation proposed for the execution of the work.

ART. 19. From the decision of the civil governor an appeal lies only to the proper department within the eight days following that of the administrative notification.

The department shall decide within the thirty days following that of the record of the filing of the proceedings by means of a royal decree.

ART. 20. After the necessity of occupying one or more properties has been declared in order to execute a work of public utility, the designation shall be made of the estates or parts thereof to be expropriated, as also their appraisal; and for this purpose the governor of each province of those interested in the work shall notify, by means of the *Boletin Oficial*, the property owners whose names appear in the corrected nominal statement, and furthermore they shall be personally or individually notified, fixing a period of eight days, in order that they may appear before the respective mayors and designate the expert who is to represent each one in said operations. If they should not be found, the formalities prescribed for citation and summons in the law of civil procedure shall be observed.

For the same purpose he shall communicate with the representative of the administration or of the corporation which is to finance the work, who must have been previously properly empowered.

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The appointment of experts before the mayors should be made by the same persons whose names appear in the nominal statement, and no other representation shall be admitted except by a power of attorney, duly authorized, either general or special for this case.

ART. 21. The experts appointed both by the administration and by the property owners must have a professional degree corresponding to the kind of work committed to their charge, and no other limitations of the conditions of appointment shall be made except that they have practiced their profession for at least one year. The appointment of persons who have not these qualifications, as well as those made without observing the provisions of the foregoing article, shall be considered null, it being understood that the respective property owners, as well as those who have made no appointment, consent to have the expert who is to represent the administration, or the person who discharges his duties, or that of the corporation who finances the work, to represent them.

ART. 22. The engineer or professional person who represents the Government, or in general the person referred to in the foregoing article, shall receive from the governor of the province a certificate in which are stated the appointments made before the mayor or mayors of the districts which are included in the work and shall fix the day on which the experts are to commence the surveys, directing the same personally or through their assistants, so that in the least possible time and with the greatest exactness all the necessary data may be obtained, in order to make the appraisal.

ART. 23. The data referred to in the foregoing article shall consist of a detailed and correlative statement of all the properties that are to be expropriated, with their situation, character, total area, and boundaries, as well as the kind of land they contain and explanations as to their nature or products.

Furthermore, the rent of each property, as shown by existing contracts, shall be stated, as well as the taxes paid on the same, the taxable value represented, and the tax pertaining thereto, according to the last assessments.

It shall also be stated how the expropriation affects each estate, giving the area desired to be expropriated, and if not to be entirely occupied, the form and area of the remaining part shall be stated. These facts shall be shown in a plan drawn on a scale of 1 to 1,400 for rural property, and on a scale of 1 to 1,100 for urban property, which plan shall accompany the report indicated.

There shall also be stated if in some estate that is not to be entirely occupied it would be more advisable to expropriate all or leave the remainder for the owner, for which purpose the opinion of the expert appointed by the owner must be followed.

ART. 24. The documents referred to in the foregoing article must

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be signed by common consent by all the experts engaged on any work or part thereof, or in each municipal district, and they shall be transmitted by the director of the work to the civil governor of the province with his report, containing also any remarks he may deem proper as to the conduct of the experts.

ART. 25. The cost of these operations, as well as the salaries of all the experts, shall be defrayed by the administration, or by its legal representative, for the entire period.

The buildings, plantings, improvements, and works which are not of recognized necessity for the preservation of the property, made after the date which terminates this period, shall not be taken into account in fixing the amount of the indemnity.

SECTION III.—THIRD PERIOD—APPRAISAL.

ART. 26. When the estate or part of an estate that it is necessary to expropriate, belonging to an individual, establishment, or any corporation, is definitely known, the representative of the administration shall try to secure the same by agreement with the owner, for which purpose he shall address, through the governor of the province, to the interested property owners, a statement of the appraised value of each piece of property, made by the expert of the administration, in which these circumstances appear taken from the general report, and there shall be included the fixed price to be paid to the owner in full and free of all costs. The owner within a period of fifteen days shall fully and freely accept or refuse the offer, any conditional acceptance being considered null.

The acceptance shall carry with it the right for the administration to occupy the entire property or the part thereof determined in the statement of valuation, always after the payment of the price thereof.

ART. 27. When the owner refuses to accept the offer of the administration, he is obliged to present another statement of valuation, signed by his expert, in which, according to the same data, must be stated the appraisal he believes to be just, which appraisal must be given to the governor within the period granted to the owner for deciding upon the offer made.

The representative of the administration shall transmit another similar statement, signed by the expert appointed by him, as soon as the governor has been notified of the refusal of the owner.

The fees earned by the experts for these appraisements shall be respectively paid by each party in interest, as also the stamped paper on which the statement of appraisal is written.

ART. 28. In the same there must be stated in detail the grounds for the appraisal, both with regard to the class of the property and to the price fixed. The experts shall take into account all the circumstances which may contribute to increase or diminish its value, com-

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pared with other similar properties, which have been the object of a recent appraisement in the same municipal district, and to the value of the part of the property occupied shall be added the sums representing the damages of all kinds which may be caused by the work requiring the expropriation; and as an offset to said damages, the benefits resulting to the remainder of the property from said work should also be considered.

The experts are responsible for the irregularities found in the statements of appraisal or for nonagreement with previous appraisements.

In case that the total amount of one or more statements of appraisal should be the same in both the valuation of the administration and in those of the owners, the value shall be considered as fixed by common consent.

In case of a difference between the statement of the administration and that of the owners, the experts of both parties must meet within a period not to exceed eight days, in order to see whether they can not agree as to the appraisal.

After said period has elapsed without the experts coming to an agreement, it shall be understood that they can not agree and the proceedings shall take the proper course.

ART. 29. The administration or its legal representative may, if advisable, occupy at any time real property that may have been the subject of an appraisal, on the deposit of an amount equal to that fixed in the statement of the expert of the owner, for which purpose the governor of the province shall issue the proper orders.

The owner is entitled to receive 4 per cent per annum of the amount stated for the period that elapses until he receives the amount of the expropriation definitely determined.

ART. 30. When the expert appointed by the administration and the one appointed by the owner can not agree in determining the amount of the expropriation, the civil governor of the province shall send a communication to the judge of the district requesting him to appoint a third expert.

ART. 31. The judge within eight days after receiving the communication mentioned in the foregoing article, and under his personal liability, shall appoint, *ex officio*, the expert, record his acceptance, and communicate it to the governor of the province without admitting or consenting that any objections whatsoever be made.

ART. 32. Until the judge makes the appointment of the third expert the civil governor shall order that there be attached to the proceedings:

1. The titles of ownership of the properties which the administration considers proper to demand from the persons interested.

2. The complaints presented by the property owners during the three years, last past, to the public treasury relative to the assessment of the land tax.

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3. A certificate of the tax levy on each property for the distribution of the land tax and of the quota pertaining to each during the three years last past.

4. A certificate of the register of property as to the price of the real properties it is proposed to expropriate, stating whether any of them had been transferred during the last ten years and otherwise the price for which other properties adjacent to that which is the object of expropriation has been alienated during the twelve months last past, or other property which, owing to location and character, is in similar conditions.

ART. 33. After the data mentioned in the foregoing article have been attached to the proceedings, and all other data which the civil governor of the province may consider pertinent, and the appointment of the third expert has been received from the judge, the latter, within a period that shall never exceed thirty days, shall fulfill his duty by means of a certified statement, which shall be attached to the proceedings drafted in the same manner in which the statements of appraisal were prepared, it being understood that the value must always be within the limits which have been fixed by the expert of the administration and that of the owner.

ART. 34. The governor, in view of the declarations of the experts and the other data attached to the proceedings, within the period of thirty days, and within the minimum and maximum price fixed by the experts, after hearing the provincial commission, shall decide, and state the reasons for his decision, the amount that is to be paid for the expropriation, communicating the result to each of the interested parties.

This resolution shall be published in the *Boletin Oficial* of the province when the parties in interest agree thereto.

When the resolution of the governor is final, it shall be complied with according to the procedure prescribed by the law for accounting and by special regulations.

ART. 35. Private persons may appeal to the Government within thirty days after receiving administrative notice of the decision of the governor, and its decision shall terminate governmental proceedings. The Government, represented by the proper minister, may demand from the governor the proper record of proceedings within the same period and review his decision.

In either case the proper royal order shall be sent to the governor within a period not to exceed thirty days.

The royal order accepted by the parties in interest shall be published in the *Boletin Oficial* of the province.

From the royal order terminating the governmental proceedings, an appeal lies by contentions proceedings within two months, counted from the date of the notification of the administrative decision, both for a vice in the procedure prescribed in this law as well as for an

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error in assessing the value of the land expropriated, if said error should represent at least the sixth part of the true value.

ART. 36. In all cases in which forcible expropriation takes place, in addition to paying to the person dispossessed the price at which his property was valued, he shall be allowed 3 per cent in consideration of the special value which he may attach thereto (*precio de afección*).

SECTION IV.—FOURTH PERIOD.—PAYMENT AND TAKING OF POSSESSION.

ART. 37. When the decision of the governor as to the price of the expropriation becomes final, immediate payment thereof shall be made.

The payment shall be made in coin, before the mayor of the district within which the estates are situate, for which purpose due notice shall be sent to him, with a list of the persons interested, long enough in advance so that they may assemble in the "Casa Consistorial" on the day and hour set for the payment.

ART. 38. The mayor shall see that the person who for this purpose represents the administraton, or the person who has the right to represent him, delivers the amounts stated on each statement of appraisal to the acknowledged owner of the estate, according to the provisions of articles 5 and 6 of this law, the signature of the person writing the receipt on the statement of appraisal being authenticated with the seal of the mayor's office.

When a property owner can not sign, one of those present shall do so, at his request, in which case, as well as in the case of one that will not admit of a substitute owing to the absence of the principal, the mayor shall affix his "*visto bueno*," in order to authenticate said signatures.

ART. 39. If any property owner should refuse to receive the amount designated in the respective statement of appraisal, or if upon the right to receive the value of the expropriation of one or more estates a question should arise that might occasion litigation, or if with reference to the liquidation of the royal dues upon some of them there is no agreement among the interested parties, the mayor shall suspend the payment of the corresponding amounts, recording all in a statement which he shall transmit to the civil governor as soon as the payments have been made. In this report shall also be included the names of the property owners who, notwithstanding an express citation, were not present at the payment.

ART. 40. The governor shall order the deposit of the amounts included in any of the cases mentioned in the foregoing article, and also when from the titles of the estates there should appear any obligation to make restitution, and the persons interested must apply to him when the time arrives for their realization or cancellation.

ART. 41. When the work of expropriation has been concluded in one municipal district, or in one part of the work, the person who

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executed the work shall deliver to the governor of the province a duly authenticated copy of all the statements of appraisal reached by any method which constitute the proceedings of that part of the work, so that the offices may take note of the transfer of ownership of the estates included therein; the law being observed with reference to inscription in the registry of property.

ART. 42. The rights referred to in article 4 can not be exercised by assuming that a greater area than that indicated in the respective proceedings has been occupied of an estate that has been the object of expropriation.

Should the necessities of the work require a larger occupation the valuation shall be increased on the termination thereof, or at once should the property owner demand it, at the rate agreed upon in the original proceedings, providing that the excess does not exceed the fifth part of the area contained in said original proceedings.

Otherwise the increase must be the subject of a new expropriation, although the execution of the works in course of construction can not be retarded thereby. When this occurs the new valuation shall include the land to be occupied or that has been occupied, and in no manner whatsoever the damages that may have been considered in the original proceedings.

ART. 43. If the work requiring the expropriation is not executed, or if executed there should result some surplus piece of land, as also in case the estates should remain without application on account of the object of the forcible expropriation having terminated, the original owner may recover that which was expropriated, returning the sum which he may have received or the amount which proportionately corresponds to the part, unless the parcel referred to should be a part that, without being indispensable to the work, was ceded for the convenience of the property owner, according to the last provision of article 23.

The original owners may exercise the right granted to them by the foregoing paragraph within the period of one month, counted from the day upon which the administration notifies them of the nonexecution or removal of the work which gave rise to the occupation of the whole or a part of the estates which were expropriated; and upon the expiration of that period, without a petition for a return, it shall be understood that the State may dispose of the property.

ART. 44. For the purposes of this law a parcel in urban estates is understood to be every surplus left after the expropriation that is larger than 3 meters, insufficient for building purposes according to the municipal ordinances.

In rural estates, when the part is small and its working difficult and expensive, in the opinion of experts.

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SECTION V.—INTERNAL IMPROVEMENTS IN LARGE TOWNS.

ART. 45. The expropriations necessary for the improvement, sanitation, and widening of streets of large cities shall be governed by the following provisions.

ART. 46. The municipal councils of large cities which contain not less than 50,000 inhabitants and which need interior improvements shall form the entire or partial plans of the works which are to be made within the boundaries of the same, either to harmonize with its outer growth, should there be any, or to facilitate transit, adornment, or sanitation of cities.

In the plans shall be noted with exactness the streets, squares, and lines proposed, and the lands or lots which the execution of the work may require, and the proceedings for expropriation being instituted according to the procedure prescribed in this law and the regulations for its execution, it shall be transmitted to the department in charge of civil constructions, so that the proper declaration of public utility of the work may be made.

ART. 47. For the purposes mentioned in the foregoing article not only are the estates which occupy the land necessary for the public street entirely subject to forcible expropriation, but also those which entirely or in part may be included within the two lateral and parallel zones of said street, which must not, however, exceed 20 meters the depth or width of the said zones.

ART. 48. When for the regulation or correction of some square (block) it is necessary to destroy a courtyard, street, or part of a street, the properties which have fronts or windows directly upon the same are also subject to forcible expropriation, should their owners not consent to their removal.

ART. 49. In the forcible expropriation required by the execution of the work, the value of the property shall be regulated by the price thereof which obtained before the project was approved.

ART. 50. The expropriations made for the purposes mentioned in the articles of this section shall be absolute—that is, there shall be included in the same the annuities (censos), ownership, and all other incumbrances and easements which directly or indirectly affect the rights of ownership, so that when the expropriation is made of the estate they can not be revived for any reason for the new lots which may be formed, even when all or a part of the land of the same is formed from the property or properties subject to said charges.

ART. 51. The ayuntamientos, in order to meet the cost of works declared of public utility, may contract the necessary loans, the formalities prescribed by law being observed.

ART. 52. For the purposes of article 115 of the general law of public works of the 13th of April, 1877, it is declared that in addition to

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exemption from taxes and charges on transfers of ownership granted ayuntamientos for the properties they must acquire in order to carry out the works of improvement, a similar exemption is granted to them in selling the new lots which result from the properties expropriated for said purpose.

ART. 53. They may also execute, themselves or through concessionaire companies, the works in question with the authority of the Government, but they must keep a separate account of everything exclusively relating to the same.

ART. 54. For the execution of the plans of works to which the preceding articles refer, all the rules and provisions prescribed in this law must be observed, and with regard to the parcels the provisions of the laws of the 17th of June, 1864, and that for the enlargement of towns.

TITLE III.—TEMPORARY OCCUPATIONS.

ART. 55. The administration, as well as the corporations or persons to whom their rights may have been subrogated, may temporarily occupy lands of private ownership in the following cases:

First. For the purpose of making studies or performing technical operations lasting a short time, the purpose of which is to collect data for the formation of the plan or for the remarking of the ground plan of a construction.

Second. For the establishment of stations and temporary roads, workshops, storehouses, deposits of materials or any others required by the works previously declared of public utility, with regard to the construction thereof as well as with regard to the ordinary repair or separation.

Third. For the extraction of materials of all kinds which may be necessary for the execution of said works, whether scattered over the estate or whether they must be the object of a specially instituted working.

ART. 56. Urban property is specially excepted from temporary occupation or the imposition of easements; but in limited cases, in which the use thereof may be necessary for the services mentioned, the express permission of the owner must be obtained.

ART. 57. The public official in charge of the study of a work of this character, or the private individual duly authorized for the same work, shall be provided by the governor of the province with credentials for the mayors of the towns within whose districts they are to work, in order that they may be given all the assistance possible and most specially the securing of permission from the respective owners for the commission in charge of the studies to pass through their estates. The damage which may be caused thereon by the work must be paid at once after appraisal of two experts, appointed by the chief in

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charge of the studies and the proprietor, or according to an adjustment by the mayor or by the person upon whom he may have delegated his functions, if the former should not agree. In case of objection without cause, the mayor shall inform the governor thereof, in order that he may render the decision which may be proper in accordance with the general law of public works.

At the instance of a party, and after the evidence which may be considered advisable, the governor may withdraw the authorization granted and enforce the liability which may be proper for any abuse committed.

ART. 58. The declaration of public utility of a work carries with it the right to the temporary occupations required in the execution thereof.

The necessity of the latter shall be the object, whenever necessary, of a proceeding conforming to the provisions of the second section of Title II, but the declaration of the governor referred to in article 18 shall be final, and without prejudice to subsequent proceedings the appraisal and the consequent occupation may take place. When an estate is in question with whose owner prior negotations have been had, the publication of the notices in the *Boletin Oficial* shall be suspended, the negotiations being conducted with said owner through the mayor.[1]

ART. 59. As it is not possible in a majority of cases of temporary occupation to fix in advance the extent or the duration of said occupation, the governor shall order that it take place after an agreement between the administration and the owner as to the sum to be deposited to answer for the payment which may become due. Should no agreement be reached, the provisions mentioned in article 29 et seq. of the law shall be observed.

Before the temporary occupation takes place of an estate without the prior payment of the amount of the occupation the condition of said estate shall be stated, with a report of any circumstance which could offer doubts in the appraisal of the damages caused, in accordanec with the provisions prescribed for a full expropriation in accordance with article 23.

ART. 60. The appraisals in cases of temporary occupation shall always be considered in connection with the rent due which the owner has not received during the occupation, adding thereto the damage caused the property or the presumed cost of reestablishing the same in its original condition.

The appraisal of the cost of a temporary occupation must never represent as much as the value of the estate. The administration, if the appraisal of the prejudices should appear excessive, may request an

[1]This article is inserted as corrected by the law of August 4, 1882.

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appraisal of the full expropriation by the means prescribed in this law, and accept it, provided that the amout thereof does not exceed one-half more than the former.

ART. 61. The value of the material taken from an estate or extracted from quarries situated thereon shall be allowed only in case that said material should have been gathered by the owner prior to receiving notice of the necessity thereof for the use of the administration or that the quarries are open and being worked prior to said period, and that he prove that he requires said material and the product of the latter for his own use. With the exception of this case, in order that the value of the material extracted from an estate may be allowed, the owner must prove:

First. That said materials have a market value.

Second. That he has paid the proper tax corresponding to the industry which he exercises by reason thereof during the quarter preceding the quarter during which the necessity for the occupation was declared.

It shall not be sufficient, therefore, for the purpose of declaring that an allowance is proper for the material, that it could have been utilized at some time, with the permission of the owner, or for any compensation whatsover.

Neither shall claims for indemnity be taken into consideration which are presumed by reason of the leases of the estates for the establishment of specific industries, provided that they are not established under the conditions mentioned.

ART. 62. When the preservation or repair of a work of public utility requires, in whole or in part, the permanent working of a quarry, the expropriation will be proper in accordance with the procedure prescribed in this law.

ART. 63. The crops or fertilizers on an estate at the time of the occupation thereof for a work of general interest, not considered at the time of making the expropriation, shall be appraised and paid for at the time of said expropriation, by means of a summary appraisal made by two experts, one appointed by each party, between whom the mayor shall decide, or one of his delegates, should no agreement be reached; it being understood that the amount of this appraisal must never exceed 3 per cent of the value which may have been given the estate in the expropriation proceedings. These proceedings shall be conducted with the lessees or cultivators of the estate, the designation of which shall be made by the mayor in accordance with the entries contained in the municipal registers.

TRANSITORY PROVISIONS.

ART. 64. All expropriation or temporary occupation proceedings pending at the time of the publication of this law shall be governed

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by prior legal provisions unless both parties should choose to conform to the provisions of this law.

ART. 65. All laws, decrees, regulations, or orders contrary to this law are hereby repealed.

ART. 66. The Government shall publish the regulations which may be necessary for the execution of this law.

Therefore:

We order all tribunals, justices, chiefs, governors, and other authorities, civil as well as military and ecclesiastical, of whatsoever class and rank, to observe and enforce the observance, fulfill and execute this law in all its parts.

Given in the Palace on January 10, 1879.

I, the King.

C. FRANCISCO QUEIPO DE LLANO,
Minister of the Interior.

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REGULATIONS

FOR

THE APPLICATION OF THE LAW OF EMINENT DOMAIN.

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REGULATIONS FOR THE APPLICATION OF THE LAW OF EMINENT DOMAIN.

ROYAL DECREE OF JUNE 13, 1879.

In accordance with the recommendation of the Minister of the Interior, after hearing the Council of State in full, and with the advice and consent of the Ministers, I hereby approve the attached regulations for the execution of the law of eminent domain.

ALFONSO.

Given in the Palace on June 13, 1879.

C. FRANCISCO QUEIPO DE LLANO,
Minister of the Interior.

CHAPTER I.—PROCEEDINGS FOR THE DECLARATION OF PUBLIC UTILITY.

ARTICLE 1. The proceedings for the declaration of public utility of a work in cases in which this formality is necessary, according to the provisions of the law of January 10, 1879, on forcible expropriation, shall conform to the prescriptions contained in this chapter of these regulations.

ART. 2. When a work is in question the cost of which is to be defrayed in whole or in part with funds of the State, a plan of the work must precede the proceedings for the declaration of utility, which plan shall be drafted by the engineer or technical agent to whom the direction may pertain, according to the cases.

The draft of the plan shall conform to the provisions of article 6 of the regulations of July 6, 1877, for the execution of the general law of public works of April 13 of the same year.

ART. 3. The plan shall be transmitted to the civil governor in whose province the work is to be executed, in order that it may serve as a basis for the public notice referred to in article 13 of the law on expropriation. If the work should be included in two or more provinces, the notice may be issued in the same, successively or simultaneously, it being necessary in the latter case that as many copies be made of the plan as there are provinces, in order to deliver one to each governor.

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Said authority shall order that the proper edicts be published in the official periodicals, for the purposes and for the period of time which the law fixes in the second paragraph of article 13.

The Government shall also have a similar notice inserted in the *Gaceta de Madrid*, another copy of the plan being placed at the disposal of the public in the office of the department to which the work may pertain.

ART. 4. After the period fixed for the hearing of objections to the plan has elapsed, the governors shall forward the proceedings had in connection therewith to the proper department, together with their own reports.

The minister, after hearing thereupon the proper technical or administrative corporations, shall draft, if a declaration of public utility is proper, the project of law referred to in article 10 of the expropriation law, which must be presented to the Cortes for the closing of the proceedings.

ART. 5. Proceedings similar to those mentioned in the foregoing articles shall be had for the delaration of public utility of a work when the importance of the same requires, in the judgment of the Government, that said declaration be the subject of a law, although the work does not affect the general interests of the nation.

ART. 6. When the cost of the work is to be defrayed or assisted with general funds, for the distribution of which the Government may be authorized by means of a law, the procedure prescribed by articles 2 and 3 shall be observed, and the proper minister, after hearing the technical and administrative corporations, and in serious cases the council of state, shall resolve upon the declaration of utility by means of a royal decree.

ART. 7. When the cost of the work is to be defrayed with provincial funds, and should the interests of two or more provinces be concerned, the respective deputations shall provide for the draft of the project of the work in question by the technical directors of the proper service.

The draft of this project shall be prepared in accordance with the special forms which may have been published by the proper department for each case, and in their absence, in accordance with those used by the public works service.

ART. 8. The project referred to in the foregoing article shall serve as a basis for the public hearing which must be held in each of the provinces interested, which may be had successively or simultaneously, the formalities prescribed in article 3 of these regulations being observed in the latter case as well as in all else relating to the hearing.

After the period for the admission of objections has elapsed, the governors shall forward the proceedings to the proper minister, who shall decide as to the declaration by means of a royal decree, after hearing the proper consultive corporations.

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ART. 9. If the cost of the work is to be defrayed with provincial funds and should interest one province only, the deputation shall order that the proper expert make the study of the project. In the formulation of said project the formalities established in article 59 of the regulations for the general law of public works shall be observed.

ART. 10. The project shall be forwarded by the deputation to the governor of the province in order that it may serve as a basis for the public notice or hearing. The governor shall have the proper advertisement inserted in the *Official Bulletin*, fixing a period, which can not be less than twenty days, for the hearing of any objections.

Upon the expiration of the period fixed, the governor, after hearing the reports of the official and corporations which he may consider proper, and in every case the report of the provincial commission of the deputation, shall make the declaration of public utility of the work, if proper.

ART. 11. If the work is municipal the proper ayuntamiento shall have the project drafted by the respective expert.

If the work should affect more than one municipal district in the same province the different ayuntamientos interested must agree as to the person who is to make the study, and in case of disagreement the designation of said expert shall pertain to the governor.

In the formation of the project, articles 93 and 95 of the regulations for the execution of the general law of public works shall be observed in so far as applicable to the case.

ART. 12. Upon the basis of the project the public hearing shall be proceeded with, for which purpose the governor shall have the proper notice inserted in the *Official Bulletin*, fixing a period which shall not be less than eight days for the purpose of hearing objections. Upon the expiration of this period, the governor shall make the declaration of utility, if proper, after hearing the officials and corporations he may deem advisable, and in every case the deputation of the province and the ayuntamiento interested in the execution of the work.

ART. 13. When the work interests two or more towns situated in different provinces, similar procedure shall be observed, and the authorities and corporations who are to take part in the utility proceedings must agree in their resolutions. If such agreement can not be reached, any differences which may arise shall be settled by the minister of the service to which the work corresponds.

ART. 14. The resolutions of the governors in the cases in which the declaration of the public utility of a work pertains to them must always contain the reasons for their decisions, analyzing the objections which may have been made at the hearings and demonstrating whether or not they are proper.

These orders shall be published in the official bulletins of the respective provinces, and an appeal lies therefrom through administrative channels within the period of thirty days.

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ART. 15. If the declaration of utility should be requested by the petitioner of the concession of the work, the person interested shall present to the government, governor, or governors of the respective provinces, according to the cases, the proper project conforming in all points to the prescriptions of article 6 of the regulations for the execution of the general law of public works, with the documents, schedules of charges, bases for their applications, and anything else which may be necessary to give a good idea of the work which it is intended to undertake, the advantages to the general interests and the means counted on to carry it out.

ART. 16. The project presented by the petitioner shall serve as a basis for the public proceedings, which shall take place, as the case may be, entirely in accordance with the provisions contained in the preceding articles with regard to works to be executed with funds of the State, of provinces, or of municipalities.

ART. 17. After a work has been declared of public utility, the proper examination and approval shall be proceeded with. This approval shall be given, according to the cases, by the minister of the service to which the work pertains, by the deputation which is to pay the expenses, or by the governor of the province if the work were municipal; similar formalities being observed to those which are established with regard to this matter in the general law of public works and regulations for its execution.

ART. 18. The following are excepted from the formalities contained in this chapter of these regulations:

1. The works which are in charge of the State and which are executed in accordance with the prescriptions of Chapter III of the law of public works.

2. The works included in the State, provincial, or municipal plans which are designated in articles 20, 34, and 44 of said law.

3. Every work of whatsoever class, the execution of which may have been authorized by a law, or is designated in the special laws of railways, roads, waters, and ports, already enacted or which may hereafter be enacted.

With regard to the declaration of utility of works of urban police and the internal improvement of large towns, the provisions prescribed in Chapter V of these regulations shall govern.

CHAPTER II.—DECLARATION OF THE NECESSITY OF THE OCCUPATION OF REAL PROPERTY.

ART. 19. After a work in charge of the State has been declared of public utility and after the plan thereof has been approved, and after the execution of the same has been decided by the Minister of the proper service, the real properties it is necessary to expropriate for the execution of the work shall be determined.

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The second description of the ground plan which may have been approved according to the procedure prescribed in the foregoing chapter shall serve as a basis for this determination, which second ground plan shall be drafted in the case of this article by the engineer of roads, canals, and ports, or by the architect or technical person to whom, according to the case, the direction, surveillance, and inspection of the work pertains.

The person intrusted with drafting the second ground plan shall inform the governor sufficiently in advance, stating the day on which the work will begin. The governor, as soon as he receives this notice, shall issue the proper orders to the mayors of the municipal districts to which the works pertain, so that they may furnish to the engineers or other persons who are to execute this work the notices and all the assistance which will conduce to a good performance of their duties.

ART. 20. Upon the second ground plan being made, note shall be made of the situation, number, and character of the estates which it may be necessary to occupy in whole or in part, as well as of the names of the owners and their tenants or lessees.

With this data the nominal statements of the persons interested in the expropriation shall be made, which are referred to in article 15 of the law, one statement to be made for each municipal district.

The engineer, architect, or professional person who may have verified the second ground plan shall authenticate the said statements with his signature, and shall forward them to the governor of the province as soon as the work shall have been concluded.

ART. 21. The governor, within the period mentioned in article 16 of the law, shall forward to each mayor the nominal statement which may pertain to him, in order that it may be rectified in the manner stated in the said article.

The mayors, in returning to the governor the corrected statements, shall take special care to state, with reference to the poll, who are the persons who appear as the owners of the estates to be expropriated, as well as any other information which they may have with regard to the places of residence of said owners or their administrators, in order that, in so far as possible, none of the estates included in the statement shall remain without a designation of the owner or of his duly authorized representative, with whom the administration is to conduct the proceedings relating to the expropriation.

ART. 22. The governor, after receiving the statements rectified by the mayors, must revise them to decide the doubtful cases or complete what has not been determined. For this purpose he shall request the information which he may require of the register of property or of other officers, and if after all means have been exhausted the owner of an estate can not be ascertained, or if his whereabouts are unknown, the governor shall proceed to fulfill the provisions contained in the third

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paragraph of article 5 of the law, giving the proper notice to the *promotor fiscal.* The same shall be done in the cases referred to in the second paragraph of the same article.

The registers are obliged to furnish to the governor all the notices which may be necessary to define exactly the legal ownership of each estate.

ART. 23. After the nominal statement of all the persons interested in the expropriation in each municipal district has been definitely fixed in accordance with the provisions of the foregoing articles, the governor, within three days, shall proceed to announce and fix the period in which to object as to the necessity of the occupation, the provisions contained in article 17 of the law being fully observed with regard to these points.

ART. 24. The objections shall be addressed to the mayor of the town in whose district the estates are situate, and may be made verbally or in writing. In the former case, the mayor shall make a memorandum of the objection, which shall be authenticated by the secretary of the ayuntamiento. The objections shall be confined exclusively to the specific object of the proceedings, all those which are directed against the utility of the work being refused.

Within eight days after the expiration of the period for the admission of objections, each mayor shall forward to the governor the proceedings relating to his district, attaching an index of the petitions and memoranda of objections which said proceedings may contain.

ART. 25. After the governor has received the proceedings sent him by the mayors, said authority shall decide, in accordance with the provisons of article 18 of the law, as to the necessity of the occupation, hearing the engineer or architect who is the author of the plan in question and the provincial commission of the deputation.

The resolution of the governor shall be published in the official bulletin of the province, and in addition each person interested shall be individually advised, the appeal referred to in article 19 of the law being allowed thereagainst.

ART. 26. In accordance with the provisions of articles 18 and 25 of these regulations, the governors shall decide as to the necessity of the occupation when the work in question is provincial, in which case the second ground plan and the formation of nominal statements of the owners must be made by the professional person to whom the direction, inspection, or surveillance of the work pertains; and the same shall be done for municipal works, the second ground plan and the statements mentioned being made by the professional persons to whom the draft of the project may have been intrusted.

When the work affects two or more provinces or towns whose municipal districts belong to different provinces, the governor of each shall proceed in person and independently of the others in the prosecution of proceedings of this character, and shall render his decision with regard thereto in the same manner.

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ART. 27. When the work is to be executed by concession in any of the cases provided for in the general law of public works, the concessionaire, before the period when, in accordance with the conditions, he is to begin the works, must make a second ground plan of the works projected. The concessionaire himself must make the nominal statements of the persons interested in the expropriation, which must be transmitted to the governor of the province in the same manner as prescribed in article 20 for the works of the State. After the statements have been received by the governor, all the proceedings prescribed in articles 22 to 25 shall be observed until the final decision declaring the necessity of the occupation.

ART. 28. The prosecution of the proceedings upon the necessity of the occupation of the estates and their final decision shall not be suspended in any case by the measures which, in accordance with article 5 of the law and 22 of these regulations, must be taken to ascertain the owners of the estates who are unknown, or the curators or representatives of incapacitated persons for the purpose of entering into contracts, or if the property is the subject of litigation. Therefore, estates included in these circumstances shall not be considered at once, but decisions must be rendered as to others. With regard to the former, special proceedings shall be instituted as soon as it is known with what persons the expropriation proceedings are to be conducted, or when, in their absence, it has been declared that said persons are to be represented by the *promotor fiscal* of the proper court.

Neither shall the course of the proceedings be suspended on account of the appeals which the owner or owners of some estates may take from the decision of the governor, the steps relating to the expropriation of such estates being pursued in special proceedings as soon as definite decisions are rendered on said appeals.

ART. 29. The survey of the estate or part thereof which is to be occupied, by the execution of a work belonging to each owner, shall be made by experts, in accordance with the provisions contained in articles 20 et seq. of the law and the proper articles of these regulations.

The appointment of experts pertains to the persons interested, and, as representatives of the administration, the governors, and by their express delegation, when they deem it indispensable, the engineers, architects, or other professional persons in charge of the direction, inspection, or surveillance of the works, are understood to be authorized to make said appointments when State, provincial, or municipal works are in question, and the concessionaire or the person duly authorized by him in case of works by concession.

ART. 30. The experts appointed by the parties must include in their statements upon each estate, first, the area to be occupied by the work, for which purpose they shall make the proper measurements on the ground conforming to the description of the ground plan, in which they shall not be permitted to introduce changes whatsoever. The

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measurements must be made in every case under the immediate direction of the representative of the administration or of the assistant or subordinate whom the former may delegate for the purpose under his own liability. In the case of a concession, the direction of this work pertains to the concessionaire or to the person authorized properly by the same; second, the location, character, kind of land, total area, and boundaries of the estate, giving explanations as to the products thereof and the other circumstances which are to be taken into consideration to appraise the value of the same; third, the income from rents according to existing contracts, the tax paid on the estate, the taxable value represented, and the amount of the tax pertaining thereto according to the last tax lists, and fourth, the manner in which the expropriation affects the estate, there being stated, if not entirely occupied, how it is divided by the work and indicating the form and area of the parts which are not to be occupied.

ART. 31. To the information mentioned in the foregoing article shall be attached plans representing the different peculiarities and circumstances of the occupation of the estate. These plans shall be drafted by the experts on the scales indicated in the third paragraph of article 23 of the law. Nevertheless, when the area of the estate is very large in relation to the part of the same occupied with the works, this formality may be waived in so far as the part not occupied is concerned, in which case the experts must make in their statements the proper descriptions to supply the absence of the plans. When in the judgment of the experts, and all of them consenting, they should agree, nevertheless, to represent the part not occupied, notwithstanding the area thereof, the proper plan may be made, although on a scale smaller than that fixed by law, in order that the size of the plans may not be out of proportion. If the expert of the owner, against the judgment of that of the administration, should consider it advisable to make a plan of the unoccupied part of the estate, he may do so; but it shall be understood that the expense incurred thereby shall be for the account and risk of the said expert or the person interested whom he represents.

In any case the part to be occupied must necessarily be included in plans on the scale prescribed by law, stating accurately all the dimensions in order to give a clear idea of the area of the estate or the part thereof to be expropriated.

ART. 32. The experts appointed by the administration as well as by the persons interested to perform the work mentioned in the two preceding articles, must possess the conditions and qualifications required by article 21 of the law. Consequently, in order to be appointed an expert, it is necessary to possess a diploma in one of the following professions: With regard to rural property; engineer of roads, canals, and ports; engineer of forests; agricultural engineer, architect, assist-

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ant of public works, agricultural expert, master of works, surveyor, director of roads. With regard to urban property, when the buildings are not of a public character: architect, engineer of roads, canals, and ports, industrial engineer, master of works, assistant of public works. With regard to urban property which has a public character only such persons can perform the work having the titles of architect, engineer of roads, canals, and ports, or industrial engineer. In case that it is desired to expropriate an entire or part of a mining property, only mining engineers can act. When it is intended to expropriate an estate of a mixed character a mixed commission must be appointed to appraise it.[1]

ART. 33. For the appointment of experts by the parties interested and by the representatives of the administration the rules prescribed in article 20 of the law shall be observed—it being taken into consideration that, according to the provisions of the second paragraph of article 21, it is presumed that every owner who should not make the appointment of an expert within the period of eight days after being notified of the appointment of an expert by the representative of the administration or by the concessionaire, in a proper case, agrees to said appointment; as well as he who shall appoint an expert in contravention of the provisions of the said article 20, and he who shall appoint a person not possessing the requisites of the preceding article of these regulations.

ART. 34. The mayor of each municipal district shall inform the governor of the province of the appointment made by the respective owners.

The governor shall examine the statements received from the mayors, and after assuring himself as to whether the experts appointed possess the qualifications prescribed by law, he shall forward them to the representative of the administration or to the concessionaire of the work.

The governor, in sending these statements, shall state which are the experts of the parties whose appointment is to be accepted, and which are to be eliminated on account of not possessing the legal qualifications, as well as the estates whose owners may not have appointed an expert within the period fixed; all for the purpose that in the proceedings relating to the estates included in any of these cases, the expert designated by the administration may act in the name of both parties.

ART. 35. After the experts who are to execute the operations relating to the estates to be expropriated have been appointed in accordance with the provisions contained in the preceding articles, the representative of the administration or concessionaire of the work shall order

[1] This article is inserted as amended by the Royal Decree of July 4, 1881.

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that said work be done in accordance with the provisions of article 22 of the law, there being drafted for each estate a statement containing the information mentioned in article 30 of these regulations.

If on the day set for a survey of the estate the expert of its owner should not appear to perform the work, said work shall be done by the expert of the administration, it being understood that the owner is obliged to agree to what said expert may decide. A case of sickness is excepted, when the person interested will be allowed five days to make the appointment of another expert without admitting any extensions or objections.

ART. 36. The representative of the administration or concessionaire in a proper case, shall collect by municipal districts all the declarations corresponding to each work or branch thereof, and shall make a detailed and correlative report of the estates to be expropriated, stating for each one the circumstances which appear in the respective declarations. This statement shall be signed by all the experts who may have taken part in the declarations.

The right is reserved to the experts to attach to the report mentioned in the foregoing paragraph the remarks which they may consider advisable to support the rights of their principals, which remarks must always be communicated to them in order to give a clear idea of the bases therefor.

In the same manner the expert of any individual may indicate in these remarks whether in case of the nonoccupation with the works of the entire estate of his principal, it would suit him to alienate the entire estate or retain the part not to be occupied, giving the reasons for his opinion in the first case.

The remarks referred to in the foregoing paragraphs shall be attached to the report mentioned in the first paragraph of this article.

ART. 37. The representative of the administration or the concessionaire of the work shall forward to the governor of the province the statements mentioned in the foregoing article, making a full report thereon as well as upon the remarks of the experts and their conduct.

To each statement shall be attached the account of the costs of all kinds of the operations, including the fees of the experts, for the purposes of the provisions of the first paragraph of article 25 of the law. The expenses referred to in the second paragraph of article 31 of these regulations, however, are excepted.

The governor, within a period of fifteen days, shall decide, in view of the reports of the representative of the administration referred to in the first paragraph, upon all doubtful or undetermined cases which may occur in the proceedings.

Said authority shall likewise decide as to the total occupation of an estate, when only a portion thereof may be necessary for the works, taking into consideration what may be most convenient for the admin-

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istration or of the concessionaires, in a proper case, the statement upon this point of the expert of the person interested and the report thereon of the representative of the administration or concessionaire.

ART. 38. The orders of the governor mentioned in the third paragraph of the foregoing article shall be communicated to the parties, the private individuals and the concessionaires of the works who consider themselves prejudiced being permitted to appeal therefrom within a period of fifteen days from the date of the service of notice, to the Government, which shall decide definitely and without further appeal through the Minister of the service to which the work belongs.

ART. 39. The following rules shall be observed for the notifications to which the various articles of this chapter refer.

When the persons interested should reside in towns in the municipal districts within which the estates are situate, a notification served upon them, or by a writ left at their residence by the secretary of the municipal council before two witnesses, shall be considered valid. If there should be no one in the residence of some interested person to receive the writ, legal requisites shall be complied with by its delivery to the syndic of the municipal council, the proceeding being published by an edict which shall be posted at the customary places in the locality.

With regard to absent or transient owners, said proceedings shall be conducted with their administrators, attorneys in fact, or representatives duly authorized.

If one or more should not have attorneys or administrators in the town in which the estates are situate, they shall be called upon by edicts to designate them, said edicts being published in the official newspapers and a period being fixed for the appointment, which shall not be less than eight nor more than twenty days, it being understood that should the appointment not be made before the expiration of the period, any notification addressed to the syndic of the ayuntamiento shall be considered valid.

CHAPTER III.—APPRAISAL OF ESTATES SUBJECT TO FORCIBLE EXPROPRIATION.

ART. 40. After the area and other conditions of the estate or part thereof which is to be expropriated has been exactly determined according to the procedure prescribed in the foregoing chapter, its appraisal shall be proceeded with in accordance with the provisions of articles 26 et seq. of these regulations.

ART. 41. The expert of the administration, or of the concessionaire in a proper case, shall prepare for each estate or part thereof which is to be definitely occupied a statement of valuation in which he shall state the price which in his opinion should be offered the person interested

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for the acquisition of the real property and for the losses and damages caused by the occupation, it being understood that the owner is free from expenses of any kind whatsoever.

In the statement of valuation the expert signing the same must state the reasons upon which he bases his offer, taking into consideration all the circumstances contained in the declaration of the experts and other information mentioned in articles 30, 31, and 36 of these regulations, as well as the damages which may be caused or the benefits which may accrue to the part of the estate not occupied by reason of the expropriation.

ART. 42. The representative of the administration or concessionaire, as soon as he receives the statements of valuation prepared by the expert, shall forward the same to the governor in order that through this authority they may be delivered to the respective persons interested, of whom a receipt shall be demanded, upon which they shall state over their signatures on what date these documents were delivered to them.

If within three days the person interested should not be found, the statement of valuation shall be inserted in the edicts which shall be published in the official newspapers and posted in the customary places for the period mentioned in article 39.

The governor shall in the same manner inform each land owner of his obligation to answer within the period of fifteen days, counted from said date, accepting or refusing clearly and fully the offer made him, as well as of his obligation to present in the latter case and within the same period the statement of valuation mentioned in the second paragraph of article 27 of the law.

ART. 43. In case of the acceptance of the owner, the latter is obliged to vacate the estate or part of the estate mentioned in the statement of valuation, without at any time being allowed to interpose any objection, at such time as the administration or the person acting in its stead may consider necessary or convenient for the execution of the works, after the payment in every case to the person interested of the amount fixed in the aforementioned statement.

If the owner should not answer within the period fixed, it shall be presumed that he accepts the amount offered, and the administration, or the person acting in its stead, shall have the right to occupy the estate in the manner mentioned in the foregoing paragraph.

In either case the period for the delivery of the price referred to cannot exceed six months, the owner being permitted to dispose of his estate if upon the expiration of this period the amount of the valuation should not be delivered to him.

ART. 44. When the owner refuses the offer of the administration, he shall be obliged to present to the governor, within the precise period of fifteen days to which article 27 of the law refers as well as article 42 of these regulations, the statement of the valuation of the

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estate subscribed by his expert, in which the reasons which served as a basis for the valuation shall be stated, taking into consideration all the circumstances which are mentioned in detail in the first paragraph of article 28 of the said law. The governor shall forward these statements to the administration or in a proper case to the concessionaire.

At the same time the expert of the administration shall prepare for the same estate another similar statement as soon as he shall have been notified by the governor of the refusal of the owner. These statements shall be delivered directly by the expert to the representative of the administration, or to the person acting in his name.

The fees earned by the experts in these valuations, as well as the cost of the stamped paper on which the statements are to be drafted, must be paid respectively by each of the persons interested.

ART. 45. The valuation mentioned in the foregoing article shall be prepared, with regard to their form, in accordance with the forms which will be published at the proper time, together with the regulations, and care shall be taken to add thereto the 3 per cent prescribed by article 36 of the law.

ART. 46. After the statements of valuation referred to in the foregoing article have been collected by the representative of the administration or by the person acting in his stead, said representative shall examine and ascertain whether they are irregular or whether there exist any statements which do not conform with the statements contained in other documents previously formulated. Afterwards he shall forward them to the governor with his report and reasons upon said points, indicating whether the experts have incurred any liability, and mentioning furthermore the estates with regard to which the total amounts of the valuations of both experts agree and the estates with respect to which this conformity does not exist.

ART. 47. If the total amount fixed for the purpose of expropriation by each one of the experts should be the same, the value of the estate shall be considered as fixed at said amount, as prescribed by the third paragraph of article 28 of the law, and in such case the administration or the person acting in its stead shall consider itself authorized to occupy it, as in the second paragraph of article 26 of the said law and article 43 of these regulations; should the appraisals not be the same the governor shall order that the respective experts meet to see if they can agree upon the appraisal, which must take place within a period of eight days, prescribed in the fourth paragraph of the said article of the law.

If an agreement is reached, the valuation of the estate shall be fixed in accordance therewith, and each expert must give immediate notice thereof to the person he represents. The administration or the person acting in its stead may also in such case occupy the estate whenever deemed proper after the payment of the amount fixed in the valuation.

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ART. 48. In case of disagreement of the experts, the latter, in communications signed by both, and within the period of eight days, which is fixed in the fourth paragraph of article 28 of the law, shall give notice thereof to their principals. In such case, and when the experts do not make any statements, upon the expiration of said period, whether the meeting mentioned in the foregoing article has or has not been held for any reason whatsoever, the representative of the administration shall give notice of the fact to the governor, in order that the proceedings may be continued in accordance with the provisions of articles 30 et seq. of the law.

Nevertheless, according to the provisions of the first paragraph of article 29 of the said law, the administration or the person acting in its stead may occupy the estate whenever it deems it proper after the deposit of the amount fixed in the appraisal made by the expert of the owner, which deposit shall be made with the formalities established in the laws in force and after the proper prescriptions which the governor may issue for the purpose.

The owner shall be entitled to interest at the rate of 4 per cent per annum upon the amount deposited for the time intervening between the date of the occupation until he receives the amount finally fixed as the value for the expropriation.

ART. 49. As soon as the governor is aware, in the manner stated in the foregoing article, of the disagreement of the experts, said authority shall inform the judge of first instance of the district to which the property belongs of said disagreement, and he shall appoint a third expert, in accordance with the provisions of articles 30 and 31 of the law, and the prescriptions of the law of civil procedure.

The third expert must possess the qualifications which, according to the kind of estates to be appraised, are prescribed by article 32 of these regulations, and no objection whatsoever shall be allowed or admitted with regard to his appointment.

ART. 50. The governor of the province shall collect while the judge is making the appointment of the third expert, the data mentioned in article 32 of the law, and any other data which he may deem proper, applying for the purpose of obtaining the same to the owners of the estates, to the offices of the public treasury, to the register of property, and in general to all official bureaus which can furnish the same.

ART. 51. The third expert shall discharge his duties strictly in accordance with the provisions of article 33 of the law, and taking into consideration all the data mentioned in the foregoing article, for which purpose the governor must deliver them as soon as collected.

ART. 52. The record of proceedings referred to in articles 33 and 34 of the law shall be composed for each of the estates with regard to which there may have been a disagreement in the valuation:

1. Of the declarations of the experts which contain the data men-

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tioned in articles 30 and 31 of these regulations, as well as the statements referred to in article 36, with the remarks which may have been made by the experts and the reports thereon by the representative of the administration, in accordance with the provisions of article 37.

2. Of the offer which may have been made to the owner for the acquisition of his estate, according to the statement of valuation prepared by the expert of the administration, in accordance with the provisions of article 41 of these regulations.

3. Of the statements of valuation prepared by the experts of the parties, in accordance with the provisions of articles 44 and 45, in view of the refusal of the owner to accept the offer made by the administration.

4. Of the data mentioned in article 32 of the law and the statement of valuation prepared in view thereof by the third expert.

5. Of all other data, notices, and documents which said authority may deem proper to mention for a better understanding of the matter.

ART. 53. The governor, taking into consideration what may appear from the proceedings, after summarily hearing the persons interested if he deems it necessary, and especially the permanent commission of the provincial deputation, shall determine, within the period and in the manner prescribed in article 34 of the law, the amount to be paid the owner in case of disagreement in the valuation of the estate.

The decision of the governor must state the reasons therefor, and shall contain a clear and precise statement of what appears from the proceedings, and of the reasons and foundations which serve as a basis for the valuation.

This decision shall be communicated to the owner and to the representative of the administration or concessionaire.

ART. 54. The persons interested, within the period of ten days, counted from the date of the notification of the resolution of the governor, must answer, stating whether they accept the decision or not.

In the former case, the decision accepted by the parties shall be final, and shall be published in the official bulletin of the province, as prescribed by article 35 of the law.

In the latter case, the owner may make use of the right of appeal by administrative channels to the minister of the service to which the work pertains, within the period of thirty days granted him by the first paragraph of the said article 35. On his part, the representative of the administration or concessionaire in a proper case, may also apply to the minister within a similar period, requesting the review of the decision of the governor.

If any of the parties should permit the period fixed to expire without making use of his rights, it shall be understood that he accepts the decision rendered by the said authority.

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ART. 55. The governor, represented by the proper minister, shall decide upon the appeals mentioned in the foregoing article within the period of thirty days and the royal order issued shall close the administrative proceedings.

Said royal order shall be communicated to the parties, and, if they should accept it, it shall become final and shall be published in the official bulletin of the province.

ART. 56. An administrative appeal lies from the decision of the Government within the period and for the causes mentioned in the last paragraph of article 35 of the law.

The claims made in the latter case by the appellants must determine exactly the amount which is considered a just price for the estate to be expropriated, and which constitutes therefor the lesion the curing of which is requested.

The decision of the contentions court (tribunal contencioso) rendered in accordance with the laws which are in force on the matter, puts an end to the appraisal proceedings; and after being published in the *Gaceta de Madrid* and in the official bulletin of the province it is binding upon the persons interested.

ART. 57. The notices which in all the cases referred to in the various articles of this chapter should have to be served upon the owners of the estates, upon their experts, and upon the concessionaires of the work in a proper case, shall be made in accordance with rules similar to those prescribed in article 39 with regard to proceedings as to the necessity of the occupation of the estates mentioned.

ART. 58. The course of the general proceedings in each district shall never be suspended by the objections which may be made by the owner of an estate, or the concessionaire of the works, in cases in which he makes use of the right of appeal granted him from administrative decisions in various articles of this chapter, and, therefore, the proceedings relating to the estates of the other persons interested shall follow their ordinary course, without prejudice to the separate proceeding relating to the estate of the appellant when the proper decision may have been rendered upon his objection.

CHAPTER IV.—PAYMENT AND TAKING OF POSSESSION OF EXPROPRIATED ESTATES.

ART. 59. After the proceedings relating to the valuation of estates which are to be expropriated for the execution of a work under the charge of the State have been closed, according to the rules prescribed in the foregoing chapter, the governor of the province shall forward the valuation proceedings to the proper department.

The minister shall take the proper steps in order that the proper "Ordenación de Pagos" may issue the respective warrant for the payment of the sum to which the expropriation amounts of the estates

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included within the municipal district to which the proceedings relate, with the exception of those the amount of which may have been paid on account of the urgency of the occupation, either with the agreement of the persons interested in the cases mentioned in articles 43 and 47 of these regulations, or by the deposit referred to in article 48 on account of this consent not having been given.

ART. 60. In the issue of the warrants mentioned in the foregoing article, the rules established in the general accounting law and in the regulations and instructions issued for the execution thereof shall be observed.

ART. 61. After the warrant for the payment of the expropriations in a municipal district have been received by the province, and after having been collected by the disbursing officer in whose favor it was drawn, the governor shall fix a day on which the payment is to be made, which shall be announced in the official newspaper of the province a sufficient period in advance, notice in advance being also given to the mayor of the corresponding district, to whom the list of persons interested shall be sent.

The mayor shall address these persons interested individually, informing them of the day, hour, and place which may have been set for the payment.

ART. 62. Upon the day and hour and at the place designated the mayor, the representative of the administration, or the delegate authorized for the purpose by the said administration, the paymaster, the secretary of the ayuntamiento, and the persons interested who may have answered the call shall meet, and the payment of the amounts stated in the proceedings shall be proceeded with in the order in which said interested persons appear in the list transmitted by the governor.

The payment shall be made in coin and to the persons who may be the recognized owners of the expropriated estates according to the provisions of articles 5 and 6 of the law, no other persons being permitted to appear on behalf of the persons interested unless they possess a duly authorized power of attorney, either general or express for this case.

The mayor shall authenticate with the seal of his office the signatures of those who receipt the respective valuation statements, and shall enforce a strict observance of all the provisions of article 38 of the law.

ART. 63. None of the persons interested shall be permitted to make any objections or remarks upon signing the receipt for the amount which may be due them. This receipt, therefore, must appear full and clear upon the respective statement. If some private individual should have any statement to make, the payment of his expropriation shall be suspended, there being reserved to him the right to make such objection to the governor as he may consider proper.

ART. 64. Doubts which may arise at the time of payment with regard

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to any of the incidents thereof shall be decided by the mayor after hearing the representative of the administration, and reserving to those who consider themselves injured by the decisions of said authorities the right to appeal from the same to the governor of the province.

ART. 65. After the payment, the secretary of the ayuntamiento shall prepare a memorandum of all the incidents which may have taken place, as well as of all the circumstances mentioned in article 39 of the law, by virtue of which payment for one or more of the estates included in the proceedings may not have been made.

The memorandum shall be signed by the mayor, the representative of the administration, the disbursing officer and the secretary of the ayuntamiento, and shall be forwarded by the former to the governor with the proceedings which may have served as a basis for the payment. The representative of the administration shall forward at the same time to the said governor the copy of all the valuation statements mentioned in article 41 of the law for the purposes prescribed therein.

The copies of the statements referred to in the foregoing paragraph, after being authenticated by the governor, shall be considered as authentic documents for the purposes of their inscription in the register of property, according to the provisions of article 8 of the mortgage law, and the registers shall have, therefore, the duty to record them, even though no public instrument should have been executed for the corresponding transfers.

ART. 66. The disbursing officer shall take charge of the amounts which remain without application for the reasons mentioned in article 39 of the law, and he shall cover them within the period of eight days after the payment into the treasury of the economic administration of the proper province, receiving the proper deposit receipt therefor.

Said amounts shall remain at the disposal of the governor in order that they may be delivered to the respective persons interested as the questions which caused their deposit are decided.

ART. 67. When, by virtue of the provisions of articles 43 and 47 of these regulations, it should be advisable for the administration to occupy an estate before the conclusion of the expropriation proceedings, when the amount of the indemnity to be paid has already been determined, the governor, at the instance of the director or person in charge of the inspection of the works, shall address the minister of the proper service requesting that a warrant be issued for the corresponding amount.

This warrant shall be drawn in favor of the disbursing officer, who, after collecting the amount thereof, shall deliver without delay the sum to the respective owner, taking a receipt from the latter, which shall appear on the statement of valuation pertaining thereto.

The disbursing officer may indorse the warrant in favor of the owner, observing the same formalities with regard to the receipt.

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If the occupation of an estate should be advisable without the amount of the expropriation having been determined in a definite manner, according to the provisions of article 48 of these regulations, the governor shall inform the minister, in order that the proper warrant may be issued for the amount which may appear in the valuation of the expert of the owner, or, in his absence, the expert of the administration.

In the latter case the said warrant shall be drawn in favor of the disbursing officer, who, as soon as he collects it, shall deposit the amount in the treasury of the economic administration of the province, in accordance with the accounting instructions which are in force at the time these operations take place.

ART. 68. The payment of the expropriation of any estate which may have been occupied, in view of the amount of the valuation made by the expert of the owner, or the one of the administration in the absence of the former, in accordance with articles 48 and 67 of these regulations, shall be made as soon as a final decision is rendered in the litigation, either in the administrative or in the contentious proceedings. The governor shall then order the deposit, in order to deliver to the person interested the portion which may pertain to him, covering the balance, should there be any, into the proper treasury, all with the formalities which are prescribed in the accounting regulations of the department to which the work pertains.

ART. 69. The governor shall contribute by all the means in his power to facilitate the operations mentioned in the foregoing articles, in order that the payment of the amounts of the expropriation may take place in the shortest period possible, and shall adopt the measures which may conduce to the custody and safety of the funds destined to the said payment.

ART. 70. After the payment of the expropriation has been made in any of the cases mentioned in the law and in these regulations, or after the deposit referred to in articles 48, 67 and 68 of the same, the administration shall at once enter into the possession of the expropriated lands or estates, which act shall take place before the mayor of the respective jurisdiction.

ART. 71. If during the execution of the works the necessity of occupying a larger area than that allowed in the statement of valuation should be recognized, payment shall be made for the part which may have been occupied, in accordance with the provisions contained in the second and third paragraphs of article 42 of the law.

ART. 72. If the work which required the expropriation should not be executed, the governor shall inform the owner of the expropriated estate thereof in order that, within the period fixed in the second paragraph of article 43 of the law, he may state whether he wishes to recover the estate, returning the amount which may have been paid for the same.

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In an affirmative case the return shall be made after the payment of said amount in the treasury of the economic administration of the province.

In a negative case or in case the period fixed should expire without an answer being made, the State may dispose of the property as it may deem fit.

ART. 73. A similar procedure shall be observed when some parcel should remain over after the execution of the work; by parcels being understood in these cases, those which are defined as such in article 44 of the law, and taking into consideration, in a proper case, the exception made in the second paragraph of article 43.

A similar procedure shall be observed when the estates should remain without application on account of the termination of the object of the expropriation.

ART. 74. Rules identical, in so far as possible, and in other similar cases, to those established for works under the charge of the State by articles 61 and 73 of these regulations shall be applied to the payment and the taking of possession of the real property when works in charge of the deputations or ayuntamientos are in question, without prejudice to the observation of the proceedings provided for by the laws in force on provincial and municipal accounting.

ART. 75. The said articles 61 and 73 are also applicable to works executed by concession, taking into consideration the modifications which it would be necessary to introduce on account of the concessionaire being the person who is to make the payments and the one to occupy the expropriated estates, subrogating himself to the administration in all the rights and obligations pertaining to the same.

ART. 76. With regard to the notifications which it might be necessary to make to the different persons interested for the purpose of properly executing the provisions of this chapter, the prescriptions of articles 36 and 57 of these regulations shall be observed.

The provisions of article 58 shall also be taken into consideration in order not to cause a suspension of the proceedings in case of the objection of some owner.

CHAPTER V. — EXPROPRIATIONS NECESSARY FOR THE INTERIOR IMPROVEMENT OF LARGE TOWNS.

ART. 77. The expropriations which may be necessary for the improvement, sanitation, and widening of streets in towns having at least 50,000 inhabitants, shall be governed by the provisions of section 5, Title II, of the law, and the prescriptions of this chapter of these regulations.

ART. 78. When the ayuntamiento of any of the towns referred to in the foregoing article should desire to execute works which embrace the three conditions of improvement, sanitation, and widening of

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streets for one of the purposes mentioned in article 46 of the law, it shall issue orders that its municipal architect or the technical person to whom it may consider proper to intrust this work proceed to make a study of the corresponding project.

ART. 79. The project must contain the documents which are generally required for all public works, which are the following:

1. An explanatory memorial.
2. Plans.
3. Document of technical conditions.
4. Estimate of cost.

In the explanatory memorial a detailed description shall be made of the works planned, justifying their necessity for the purpose of their construction, as well as the necessity for the occupation of the estates which it would be requisite to expropriate in order to execute the same.

In the plans the streets, squares, and alignment projected shall be precisely fixed, specially marking the lands or lots which it would be necessary to occupy for the realization of the project. There shall likewise be marked on said plans the estates which it would be necessary to expropriate, not only for the widening of streets but also for the formation of lots regularly laid out in lateral zones parallel to said street which it is necessary to expropriate, each of which must have the width of the street planned; but always within the maximum limit prescribed by article 47 of the law, as also those which may be necessary for the formation of blocks and which are subject to forcible alienation, according to the provisions of article 48 of the said law.

The document of conditions shall contain the description necessary to give a complete idea of the works and the prescriptions and requisites which their execution may require.

The estimate of cost shall include, properly classified, the sums which may be necessary to carry out the work.

With regard to the form of each of these documents, the forms prescribed by the department to which the civil constructions pertain shall be adhered to.

ART. 80. The project must furthermore contain the establishment of the urban public services over the entire area included in the works, the plans for the fronts and other details to which the new buildings which may be erected on the lots must conform.

ART. 81. There shall be attached to the project an estimate of the sum required, according to its author, for the expropriations which may be considered necessary, and, in a proper case, an estimate of the amount which may be received from the sale of the lots which may result on the expropriated area adjoining the public road.

ART. 82. The project, prepared in accordance with the terms prescribed in the preceding articles, shall be forwarded to the governor

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of the province in order that it may serve as a basis for the proceedings on the declaration of public utility.

The governor shall order that the proper edicts be inserted in the official bulletin and in the *Gaceta de Madrid*, announcing that the question is the declaration of public utility of the work to which the project refers, and fixing a period not less than ten days for the admission of objections.

ART. 83. Upon the expiration of the period fixed, the governor shall forward with his own report the proceedings to the minister under whose charge civil constructions may be, whose duty it is to make the declaration of public utility in accordance with the provisions of the second paragraph of article 46 of the law. This declaration shall be made, if proper, after hearing the technical corporations which the minister may deem fit to consult, and in important cases the council of state. The commission of historical and artistic monuments must also be heard if among the buildings to be expropriated there should be any which has such character or which should contain works of recognized merit.

The declaration must in every case be made by a royal decree adopted by a council of ministers, the basis for the resolutions being duly explained.

ART. 84. After the declaration of utility has been made, a resolution shall be adopted as to the approval of the project. This approval pertains to the Government, which shall grant it in a proper case, after the reports of the technical corporations which may be proper, by means of a royal decree countersigned by the minister of the service to which the work corresponds.

ART. 85. After the works have been declared of public utility, the project approved and its execution ordered, a ground plan shall be made thereof and the nominal statement of the persons interested in the expropriation shall be prepared, which shall be duly rectified in order that the persons with whom the administration is to conduct the proceedings may be properly known.

The provisions contained in articles 19 to 22 of these regulations shall be observed in all these operations.

ART. 86. Thereafter the proceedings on the necessity of the occupation of the estates to be expropriated shall be had. For this purpose the governor shall proceed within three days from the day he receives possession of the corrected statement of the persons interested in the expropriations to make the proper announcement and fx the period within which to object.

The objections shall be made to the mayor, and must be in writing, who shall afterwards forward them to the governor who shall decide as to the necessity of the occupation, after a report from the author of the project, the ayuntamiento, and the provincial commission of the deputation.

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The declaration of the governor shall be communicated to the respective persons interested, and an appeal lies therefrom to the proper minister, who shall definitely decide, the provisions of article 19 of the law and articles 23, 24, and 25 of these regulations being observed in all these proceedings.

The provisions of article 28 shall also be observed in order not to hinder the proceedings, when the person interested in the expropriation of an estate should not be known at the time the proceedings are to be instituted.

ART. 87.[1] After the necessity of the occupation has been declared the parties interested shall proceed with the appointment of the experts who are to represent them in the surveys and collecting of data necessary for the appraisal, which appointment can be given only to such persons as possess a title of architect, engineer of roads, canals, and ports, or industrial engineer, or, otherwise, a builder or assistant builder. When the estate is of a mixed character it must be appraised by a mixed commission.

The experts shall survey the estates which are to be occupied and shall state in their declarations all the circumstances of the estate, in accordance with the provisions of article 30 of these regulations. In such cases plans shall be made of said estates upon a scale of 1 to 100, or upon a larger scale when considered necessary for greater clearness, it being understood that the plans must always include the entire estate in question, even though the expropriation should affect a part thereof only.

The declarations of the experts shall be collected by the representative of the administration, and shall be forwarded to the governor with the expense accounts, including the fees of the said experts.

In all the proceedings mentioned in the preceding paragraphs, the provisions of articles 33 to 37 of these regulations shall be observed in so far as applicable and not modified by the corresponding articles of this chapter.

ART. 88. After the portion of the estate to be occupied has been determined, the expert of the administration shall prepare a statement of valuation in which, taking into consideration all the circumstances which appear in the statements of the experts in accordance with the provisions of article 23 of the law and the corresponding ones of these regulations, the highest amount which in the opinion of the said experts can be allowed to the owner in payment of all claims, free from all expenses, shall be stated. In this statement the expert signing the same shall duly state the reasons upon which he bases his valuation.

The statement mentioned in the foregoing article shall be submitted for the acceptance of the owner, who shall state whether he does or

[1] This article is inserted here as amended by the royal decree of July 4, 1881.

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does not agree to accept the amount offered, the provisions of articles 41, 42, and 43 of these regulations being observed in all these proceedings.

ART. 89. If the owner should refuse the offer of the administration he shall present another statement of valuation made by his expert, and the one representing the ayuntamiento must do likewise. These two statements shall afterwards be compared, and if their totals are the same the valuation of the estate shall be fixed thereat.

Should the total amounts which appear on the statements not coincide, the proper judge shall appoint a third expert, who shall make his declaration, taking into consideration all the data mentioned in article 32 of the law, and the governor shall render a decision with his reasons, which shall be communicated to the parties in order that they may make use of the right of appeal granted them by law.

ART. 90. In the proceedings mentioned in the foregoing article the procedure prescribed by articles 44 to 56 of these regulations shall be observed, taking into consideration:

1. That the documents which relate to the valuation of an estate subject to forcible alienation on account of its having a frontage or openings upon the yards, streets, or parts of streets which must be removed for the proper laying out or formation of blocks, in accordance with the project approved, the easements or lighting privileges or views must be taken into account as if they faced upon a public road.

2. That in order to appraise the value of the estate, no improvement can be considered which was made after the initiation of the project.[1]

3. That the expert of the owner must indicate when the entire estate should not be subject to expropriation, whether the alienation of the rest would be advisable for the owner, or whether he should retain it in accordance with the provisions of the paragraph of article 23 of the law.[2]

4. That these appraisals must be absolute and there must be included therein, therefore, the annuities, ownerships, incumbrances, and easements thereon of all kinds affecting the right of ownership directly or indirectly, so that after the expropriation of an estate has taken place said charges or incumbrances can not revive for any reason whatsoever with regard to the new lots which may be formed.

5. That the ayuntamiento may at once occupy the estate from the moment it pays to the owner the amount of the expropriation when said amount has been determined, and, otherwise, upon the deposit of the amount stated in the declaration of the expert of the person interested or that of the administration, in his absence.

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[1] Not after the *initiation* but after the *definite approval* of the project is understood, according to the royal order of April 28, 1883.

[2] What paragraph is referred to is not stated.

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ART. 91. The payment for and taking of possession of the said estates shall be made by the ayuntamiento, subject to the laws and instructions upon municipal accounting at present in force, or which may be in force when said proceedings are held, which shall conform in so far as applicable to the provisions of article 4 of these regulations.

ART. 92. After the ayuntamiento has paid or deposited the value of the expropriations which are comprised in the project, the demolitions which may be necessary to carry them out shall be proceeded with, in a proper case, marking off the blocks which may have been planned adjoining the public road.

The lots which constitute the blocks mentioned in the foregoing article shall be sold by the ayuntamiento at public auction, in accordance with the decree of February 27, 1852, and the instructions which are in force as to its application, always after the documents of conditions which will have to be prepared for the purpose by the municipal corporation with the approval of the governor or of the government, if proper.

In said conditions it must be specifically stated that the new buildings must conform to the project approved, and that upon the sale by the ayuntamiento of the lots referred to in the foregoing paragraphs exemption is granted from the payment of the tax on property rights and transfer of property, corresponding to the transfer of ownership of the said lots.

An express condition in these sales shall also be the period for the beginning and completion of the buildings, no extension in the execution thereof being permitted. Noncompliance with this provision shall always carry with it the reversion of the lot to the ayuntamiento with the loss by the purchaser of the sum he may have paid therefor.

ART. 93. The ayuntamientos may execute the works referred to in this chapter either by administration or by contract, the provisions of these regulations being observed, as well as the provisions in force on public works, and, in the latter case, the provisions of the decree upon contracts for public services and instructions for its execution.

Contracts in a proper case shall be let only for the works of demolition, removal of earth for laying out the lots, and the establishment of urban public services, the estimates made for these objects serving as a basis for the auction. The expropriations and expenses of the same shall be borne by the ayuntamiento, which reserves the ownership of the lots laid out for the sale, as prescribed in article 92.

ART. 94. The ayuntamientos may also execute works of this character for improvement, sanitation, and the widening of streets of towns by means of concessions to private individuals or duly organized companies. In such cases the concessionaire shall subrogate himself in all the rights and obligations which pertain to the latter. Said concessionaire binds himself therefor to pay the expropriations, to execute the

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demolitions which may be necessary to establish the urban public services of all kinds and to lay out the lots which may result, all strictly in accordance with the project prepared by the ayuntamiento and approved by the proper person.

In compensation for the expense of the services and works, the concessionaire shall become the owner of the land which it may not be necessary to occupy for the public road, and he may unrestrictedly alienate the same without any other conditions being imposed but a strict observance in the formation of the blocks and lots, as well as in all that relates to new buildings, of the provisions of the project, the law, and these regulations.

ART. 95. When the ayuntamiento considers the granting of a concession of this character to be advisable, upon a project ordered prepared and the cost of which was defrayed by the municipal corporation, the granting of the concession shall be made by the ayuntamiento, and always at public auction.

The bidding shall be upon the value given to the lots laid out after the works of the project have been executed, and after deducting from said value expenses of all kinds which may be considered necessary in order to complete the same.

ART. 96. In order to hold the auction prescribed in the foregoing article, the ayuntamiento shall order that the author of the project prepare, before anything else, a calculation of the value of the lots, which is to serve as a basis for the bidding.

This calculation shall contain, in the first place, the amount which, according to the estimate of the author of the project and taking into consideration all the circumstances and conditions in which the different partial lots may remain, it is believed that the entire area available for new buildings is worth after the work of the demolition of the buildings expropriated and the laying out of lots.

There shall be deducted from the sum mentioned in the preceding paragraph:

1. The cost of the study of the projects and the cost of the copies for the proceedings.

2. The sums which it is calculated are necessary for the payment of the expropriations and the expenses inherent thereto for any reason whatsoever.

3. The calculated cost for the works of demolition of buildings, it being considered that the material which can be used from said demolition is to remain the property of the concessionaire.

4. The estimated cost of the removal of earth and other work which may be necessary for the leveling of the road and the establishment of all public and urban services, as well as for the formation and marking off of lots.

5. All other expenses which may arise in connection with a proper realization of the project.

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To the sum of the calculated expenses, in accordance with the preceding numbers, shall be added 15 per cent to meet the cost of direction, administration, advance of capital, and industrial benefit.

ART. 97. The amount which may result from the calculation referred to in the foregoing article for the value of the alienable lots shall serve as a basis for the auction, and the amount, increased in a proper case, shall be paid to the ayuntamiento by the private individual or company whose bid is accepted.

In addition the concessionaire will be obliged to pay to the ayuntamiento the sum which appears in the said calculation as the cost of the project and of the copies necessary in the proceedings.

ART. 98. Prior to the public sale a document of private and economic conditions shall be prepared by the ayuntamiento, in which shall be stated:

1. The deposit required of persons who desire to take part in the bidding. This deposit shall be 1 per centum of the amount calculated for the payment of expropriations and the cost of the works, and shall be returned to all the bidders, excepting the one whose bid was accepted, upon the day following the public sale.

2. The period within which the contract is to be elevated to a public instrument, under the penalty of the loss of the deposit mentioned in the foregoing article.

3. The bond to be given by the concessionaire upon the execution of the instrument to answer for the fulfillment of his obligations. This security shall be 10 per cent of the amount calculated for the payment of expropriations and the execution of works of all kinds. The part of the said security which corresponds to the expropriations shall not be returned until the concessionaire shows that he has made all the payments, and that the last proceedings prescribed in the law and these regulations have been fulfilled. The part which pertains to the works shall be returned upon the conclusion of the same, and after they have been received by the technical person in charge of the inspection of the works.

4. The date when the concessionaire is to begin or terminate the work and the new buildings specified in the project, as well as the amount of work to be done within certain periods, in order that it may be concluded within the period fixed.

5. The period when the concessionaire is to pay to the ayuntamiento the sum fixed for the cost of studies as well as when he is to pay the amount for which the concession was adjudicated to him.

6. The cases in which the concession will be forfeited and what it may be proper to do in each of these cases in accordance with the provisions hereupon contained in the laws in force on public works.

7. All other conditions which in each special case it is necessary to stipulate, in the opinion of the ayuntamiento, among which must never

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fail to be included the period for the beginning and conclusion of the constructions, in accordance with the provisions of these regulations, nor shall the penalty to be imposed in case of nonfulfillment of this condition which is fixed in the same be omitted.

ART. 99. After the concession has been awarded by the ayuntamiento, the concessionaire shall pay the expropriations of the estates which it may be necessary to occupy, strictly complying with all the provisions with regard hereto contained in the law and these regulations.

Thereupon he shall execute the works of demolition and mark off the lots and establish all the urban public services in accordance with the project, and upon the conclusion of all this work he shall be given possession of the land and lots which remain his property, with the formalities prescribed in the laws in force.

At the time stated in the conditions of the concession, the concessionaire or the persons to whom he may have transferred the lots shall begin the construction of the new buildings, with the understanding that every lot not built upon within the unextendible period fixed for the purpose in the said conditions shall revert to the ayuntamiento, with the loss by the concessionaire, and, in a proper case, by the person who acquired the same, of the sum he may have paid therefor.

The ayuntamiento shall sell this lot or lots at public auction under similar conditions, in order that the buildings on the street may be speedily concluded.

ART. 100. The ayuntamiento may grant an extension to the concessionaire for the conclusion of the works, provided that it is duly proven that in the prosecution of the expropriation proceedings cases have arisen for which the concessionaire is not to blame, and which hindered the normal progress of the corresponding steps.

In no case can extensions be granted with regard to the construction of the new buildings which are to be erected on the lots marked off, nor any dispensation or exemption from any of the conditions relating to this part of the work fixed in these regulations.

ART. 101. Any private individual or duly organized company may address the ayuntamiento proposing the execution of works for the improvement, sanitation, and widening of streets of a town, and request the concession thereof.

The petitioner shall apply to the ayuntamiento for the concession, and must attach to the request the proper project. This project must conform to the provisions of articles 79 and 80 of these regulations, and the petitioner, upon presenting it, shall attach the deposit receipt showing that he has deposited in the treasury of the ayuntamiento a sum equivalent to 1 per cent. of the sum which corresponds to the expropriations and the value of the works projected according to the estimate.

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ART. 102. The project of the petitioner shall afterwards be submitted to all the proceedings which articles 82 to 84 prescribe for the declaration of public utility, and for the approval of the said project.

Afterwards the cost of the studies shall be taxed, which shall be done by two experts appointed, one by the person interested and the other by the ayuntamiento, or by a third person designated in advance and by common consent by the said experts in case of disagreement.

ART. 103. The concession shall be granted by the ayuntamiento at a public auction, for which the provisions contained in articles 95 to 98 shall be observed, the petitioner being obliged to make the calculation which, according to article 96, is to serve as a basis for the public sale.

The right of *tanteo* is reserved to the petitioner in such case—that is to say, the right to receive the concession, if he should so desire, for the sum which may have been offered by the highest bidder.

If the person interested should desire to make use of this right he must attend the public sale, either in person or through a duly empowered representative, which sale shall be extended one-half hour in order that the petitioner may make the proper declaration, which shall be recorded upon the minutes of the sale in a proper case. If upon the expiration of the half hour no declaration whatsoever should be made, it shall be understood that the petitioner renounces his right.

If the petitioner of the concession should not be given the concession at the sale, the successful bidder must pay to the former, within the period of fifteen days from the date the concession was awarded to him, the sum at which the project was appraised in accordance with the provisions of article 102.

The ayuntamiento shall return to the petitioner in such case the deposit which he may have made upon presenting the project according to article 101 of these regulations, which return shall be made on the day following the holding of the sale.

The provisions of articles 99 and 100 shall be observed in this case for the payment of expropriations, the execution of the works, delivery to the concessionaire of the lots marked off, and other details established in the aforementioned articles.

ART. 104. In the sales of concessions the ayuntamiento shall observe the provisions of the royal decree of February 27, 1852, with regard to contracting for public services and the instructions issued for its application, in so far as these provisions are not modified by these regulations.

ART. 105. The ayuntamiento shall keep a separate account exclusively of the expenses relating to the works referred to in the foregoing articles, and may contract loans for their execution according to the provisions of article 51 of the law.

When the ayuntamiento should consider the negotiation of a loan

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of this character necessary it shall order its finance commission to draw up the proper project.

Said commission shall present with its project the documents which it may consider proper in order to show the condition of the municipal funds and a memorial with the reasons detailing the calculations of the operation with regard to the payment of interest and series of years of the amortization, as well as the project of the document of conditions, which is to serve for the negotiation of the loan at public sale. The ayuntamiento shall afterwards decide what it may deem proper, conforming to the provisions of the municipal law, afterwards transmitting the proceedings to the Government for its approval.

The proper minister shall render his decision after hearing the council of state.

ART. 106. The provisions contained in article 73 of these regulations are applicable to the parcels of land which are left over after the execution of the works of improvement of the interior of a town, in accordance with the project approved, and after having sold, in a proper case, the lots referred to in article 92, as well as those which may have reverted to the municipal corporation on account of noncompliance by the concessionaire or owner with the building conditions according to the provisions of the third paragraph of article 99.

The parcels which remain the property of the ayuntamiento, on account of not having been acquired by the corresponding owners, may be sold in accordance with the provisions of the law of June 17, 1864. If the work should have been executed by concession, the concessionaire as the owner of the parcels may alienate them without restriction, but always under the conditions imposed upon him in order that they may not remain a long period without the building which may be proper in accordance with the project. Nonfulfillment of these conditions, which can not be extended, shall always carry with it the reversion of the lot or parcel to the ayuntamiento with the loss to the owner of the value thereof.

ART. 107. The expropriations necessary to carry out the plan of widening the streets of a town shall be made in accordance with the provisions of the law of December 22, 1876, and Chapter V of the regulations of February 19, 1877, for the application of the said law.

ART. 108. The provisions contained in articles 39, 58, and 76, with regard to notifications to the persons interested in the expropriations and with regard to the action to be taken when any of the persons interested should make use of the right granted him by the law to appeal from administrative decisions, shall be applicable to the proceedings which may be instituted for the purpose of executing the works referred to in this chapter.

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CHAPTER VI.—TEMPORARY OCCUPATIONS.

ART. 109. The administration, or the person representing the same, has the right to impose upon private property the easement of temporary occupation whenever it should be necessary for the execution of the works previously declared of public utility and for those which are excepted from this formality by article 11 of the law on expropriation in the cases and with the requisites which are required by Title III of the said law and the corresponding articles of these regulations.

This easement is compulsory with regard to rural estates; but in no case can it be imposed upon urban estates without the express permission of the respective owner.

ART. 110. When the temporary occupation should be indispensable for the purpose of making examinations or operations in order to collect data for the formation of a plan or description of a work, which is the first case of article 55 of the law, the governor of the province shall furnish the technical person in charge of the said studies or operations credentials for the mayors of the towns within whose jurisdiction he is to work, in order that he may be given all the assistance possible, and especially to obtain from the owners permission to enter their premises.

ART. 111. The amount of losses or damages which may be caused to the owner by the temporary occupation, in the case of the preceding article, shall be fixed by two experts, one appointed by the technical person in charge of the work and the other by the owner of the estate. In case of disagreement between the experts, the amount of damages shall be fixed by the proper mayor, an appeal being allowed to the governor of the province. The sum at which the indemnity is fixed shall be paid at once to the owner by the person in charge of the works.

ART. 112. If the owner should without just cause refuse to grant permission to enter his premises, or if, after the amount of losses and damages has been fixed in the manner mentioned in the foregoing article, he should insist on his refusal, the mayor shall inform the governor of the province, who shall take the proper steps to enforce compliance with the provisions of the law and these regulations.

Nevertheless, the said governor may withdraw, at the instance of a party, the authority granted, enforcing the liability which may have been incurred by reason of the commission of any abuse.

ART. 113. Private estates may also be occupied temporarily in the second case mentioned in article 55 of the law; that is, for the establishment of temporary roads, workshops, storehouses, deposits of materials, and any other easements required in the construction, repair, and preservation of the works.

ART. 114. The necessity of the temporary occupation in the case mentioned in the foregoing article shall be declared in the terms prescribed in article 58 of the law.

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ART. 115. In these cases the owner of the land shall be indemnified for the time of the occupation, as well as for losses and damages and deterioration of any character which may be caused thereby.

Whenever it is convenient for the owners, and they should so demand, the condition of their estates shall be recorded before they are occupied with regard to any circumstance which may cause a doubt in the appraisal of the damages caused thereto.

ART. 116. When it is possible to fix in advance the extent and duration of the temporary occupation before it actually takes place, an agreement shall be made with the owner upon the amount of the indemnity. For this purpose the representative of the administration or the concessionaire shall offer to the owner the sum which may be considered proper, granting him a period of ten days in which to answer whether he accepts or refuses the said offer.

In case of his acceptance, the payment of the corresponding amount shall be made, and the estate may be occupied at once without the owner being permitted to make any objection whatsoever.

If the person interested should not answer within the period fixed in the first paragraph of this article, it shall be understood that he accepts the offer made, and the estate shall be occupied after the payment of the indemnity, as stated in the second paragraph.

ART. 117. In all cases in which it should not be possible to fix in advance the extent and duration of the occupation, an attempt shall be made by the representative of the administration, or by the concessionaire to reach an agreement with the owner, to fix a sum sufficient to answer for the amount of the idemnity. If an agreement should be reached on this point, the amount fixed shall be deposited in the treasury of the economic administration of the province to answer for the payment of the indemnity at the proper time.

In case of disagreement the parties interested shall appoint experts to determine the amount of the sum to be deposited, the procedure in these cases being similar to that prescribed for the expropriation by article 29 et seq. of the law and the corresponding ones of these regulations, the governor of the province deciding in the last case, whose resolution shall be final.

In any case, before the temporary occupation, the experts shall make a record of the condition of the estate, as prescribed in the second paragraph of article 59 of the law, and 115 of these regulations.

Similar proceedings shall be had in order to fix the sum to be deposited when the owner should have refused the offer which may have been made him in the case of article 116.

ART. 118. As soon as the works are entirely concluded, or that portion thereof which affects the lands temporarily occupied, the indemnity shall be fixed which is to be definitely paid for the occupation, deteriorations, losses, and damages caused thereby.

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An attempt shall first be made to reach an agreement with the owner to determine the amount of the indemnity, the proceedings in this case being similar to those prescribed by the law and these regulations for a permanent occupation.

ART. 119. If the owner should refuse the proposal of the representative of the administration or of the concessionaire, the taxation shall be made by experts, according to proceedings similar to those prescribed for the expropriation in the third section of Title II and corresponding chapter of these regulations, until the conclusion of the proceedings either administratively or, in a proper case, by litigation.

In these appraisals the provisions of article 60 of the law and the privilege granted by the same to the administration or to the person acting in its stead to demand the expropriation of the entire estate in the case mentioned therein must be taken into consideration.

ART. 120. For the payments and deposits which may have to be made, for the purpose of satisfying indemnities for temporary occupations, the administration shall conform to the provisions of Chapter IV of these regulations, with regard to permanent occupations.

When said payments or deposits are to be made by concessionaires or contractors of the works, the governor shall take the proper steps in order that they be made strictly in accordance with the provisions of the law and these regulations.

ART. 121. The private properties are also subject to the easement mentioned in the third case of article 55 of the law. Therefore the representatives of the administration and the concessionaires or contractors of the works may extract from said estates all materials which are to be used in said works, whether on the surface of the estates or whether their extraction must be the object of a regular working.

ART. 122. In all the cases of the foregoing article the proprietor shall be paid what may be proper for the temporary occupation in accordance with the provisions hereupon contained in articles 113 to 120 of these regulations.

There shall be paid in addition the value of the material used or extracted in accordance with the provisions contained in the following articles.

ART. 123. When it should be necessary to take from a private estate pebbles, gravel, sand, and other similar material for the execution of a work, the necessity of the extraction shall be passed upon by the governor, after holding in the most summary manner possible proceedings similar to those prescribed in article 58 of the law and 114 of these regulations.

In the cases of this article there shall be paid as indemnity only that corresponding to the losses and damages which are caused to the land by the extraction of the materials; but nothing shall be allowed for the value of the substances themselves, unless the owner clearly and

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definitely proves that prior to the approval of the project of the work they were being worked in a regular manner for the exercise of any industry and for which industry the proper tax was being paid.

It shall not be sufficient, therefore, in order to declare that the payment for the material is proper, that at some period some of the material could have been utilized with the permission of the owner or for any compensation.

ART. 124. When payment for the value of material is proper in accordance with the provisions of the foregoing article the price of the unit shall be fixed according to proceedings similar to those which are to be had in fixing the indemnity corresponding to the temporary occupation, an account being kept according to the means which may be agreed upon by the parties of the number of units which may be removed in order to pay for the same at the times and in the manner which may be proper.

ART. 125. When it should become necessary to take loose stone or rocks from an estate the necessity therefor shall be declared, as in the cases mentioned in article 123.

The indemnity, in the case of this article, shall always include the damage which may be done to the estate by the cartage of the material or in any other manner, the provisions of article 124 being observed with regard to anything else which relates to the indemnification for and value of the material in a proper case.

ART. 126. Should it become necessary to open a quarry upon some estate in order to use the stone produced in the works, after the necessity of the extraction has been declared by the governor as prescribed in article 123, the space which may be necessary shall be occupied and the owner shall be paid only the amount which may be proper for the occupation and the consequent losses and damages. In order that payment may be made for the materials extracted from an estate the owner must prove all that is prescribed in connection herewith by article 61 of the law.

ART. 127. If at the period of the service of the notice made to the owner of the necessity of stone from his lands for the execution of a work quarries already opened should be found thereon, and which were being worked prior to the said period, and the owner should prove that he needs the products for his particular use, the value of the material used shall be allowed, which value shall be appraised and paid for according to means similar to those mentioned in article 124.

The value of the stone shall also be allowed if the working of the quarries constitutes an industry for its owner upon which he is paying the proper tax, provided that these circumstances take place before the notification of the necessity of the material. In such case the owner of the quarry shall furnish the stone which may be necessary

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for the work, and he shall be paid per unit the amount agreed upon between the parties, which shall not exceed the market price thereof.

ART. 128. If the owner of the quarry should not be able to furnish the supplies for the works as they become necessary, the quarries shall be worked on their account, the owner being allowed an indemnity, which, in the absence of an agreement between the parties, shall be fixed by experts appointed by the same. In case of disagreement the governor shall decide after hearing the persons interested and the professional officials whom he may consider proper. The order of the governor shall be final, reserving the appeal to the proper minister, whose resolution shall be definite.

ART. 129. The appraisal referred to in the foregoing article shall be made, taking into consideration—

1. The market price of the stone of the quarry at the time of making the project.

2. The profits on said price to the owner.

3. The condition of the quarry upon the conclusion of the service with regard to its probable future product as well as with regard to the conditions of the working thereof.

ART. 130. For the extraction of material required in the repair and preservation of works which have been declared of public utility the quarries producing the same may be expropriated in whole or in part upon compliance with the steps and formalities prescribed in the law and in these regulations for a permanent occupation.

ADDITIONAL ARTICLE.

The provisions contained in these regulations are applicable only to civil works and constructions. Special instructions issued by the respective ministers shall determine the manner of applying the provisions of the law of eminent domain to military services and works as well as in case of war and those pertaining to the naval service.

Madrid, June 13, 1879. Approved by His Majesty. C. Toreno.

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